search of the same art extends from the elements of Claims 1-10, 15(a)-15(c) and 16-22 in Group I into the other groups. Therefore, a full search of the application does not involve an unreasonable burden on the part of the Office.

One of the main reasons the Examiner gives for the requirement is that the application contains distinct statutory classes in the categories of product, process of use, process of making and product made. However, there is no statutory prohibition against distinct statutory claims residing in the same issued patent. In fact, the U.S. Patent and Trademark Office often grants patents to claims containing a product with the process of making it; product and process of use; product, process of use and process of making; nucleotides with its encoded proteins and the like, in the same application. Thus, Applicants urge the Examiner to reconsider and withdraw the requirement to restrict this application.

In terms of equitable considerations, the requirement effectively denies a substantive right to Applicants to decide what they regard as their invention. By the Office's approach to prosecution, Applicants need to file and prosecute seven applications at great time and expense to issue and maintain seven different patents. Practically speaking, the requirement, as it now stands, will unfairly force the Applicants to forfeit patent coverage of many important aspects of their invention. The substantial cost benefit of keeping this application intact is combined with the belief that performing most, if not all, of the searches at the same time will not involve an undue burden on the part of the Office. If anything, the scope of the searches overlap significantly, several searches in the art will ultimately be the same and the Examiner will duplicate her efforts many times. Thus, Applicants urge the Examiner to withdraw the requirement to restrict this application or, at the very least, to modify the large number of groups.

Consistent with the foregoing remarks and in accord with the requirement of 37 C.F.R. § 1.143, Applicants provisionally elect with traverse to prosecute the invention of Group I, Claims 1-10, 15(a)-15(c) and 16-22, drawn to the unique chimeric nucleic acid PCV1-2.

It is respectfully requested that the Examiner consider modifying the restriction to the elected Group I to further include Group V, Claims 23-28, drawn to the novel method of making the unique PCV1-2 molecule and Group VII, Claim 32, drawn to the new chimeric sequence comprising PCV2-1. Regarding Group V, as previously noted, there is no statutory



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prohibition against a combination of claims directed to the process of making a product and the product made. Insofar as Group VII is concerned, it makes sense to examine the reciprocal construct of PCV2-1 together with PCV1-2 in a single case because their fields of search directly overlap in the same art.

Applicants currently retain the nonelected subject matter to afford the Examiner the opportunity to reconsider the restriction requirement and, thus, for future consideration on the merits. It is to be understood that the provisional election is for procedural purposes only and that Applicants reserve the right to file a divisional application directed to the nonelected subject matter of this invention in the event that the restriction requirement is upheld.

The current Office communication does not mention the Information Disclosure Statements that were submitted on June 25, 2004 and November 4, 2004. The Examiner is asked to kindly contact the undersigned attorney if she does not find either statement in the Official record of this case.

Applicants are herewith supplying formal drawings for this application that are the same as the "informal" drawings that were originally presented on March 25, 2004. The replacement drawings do not contain new matter or any change from the original drawings.

Favorable treatment of this application upon examination is respectfully solicited.

Respectfully submitted,

VIRGINIA TECH INTELLECTUAL PROPERTIES, INC. and IOWA STATE UNIVERSITY RESEARCH FOUNDATION, INC.

Date: July 22, 2005

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